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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/800,670	03/16/2004	Paul Vincent	Q80358	3012
23373	7590	11/02/2009	EXAMINER	
SUGHRUE MION, PLLC			POWERS, WILLIAM S	
2100 PENNSYLVANIA AVENUE, N.W.				
SUITE 800			ART UNIT	PAPER NUMBER
WASHINGTON, DC 20037			2434	
			MAIL DATE	DELIVERY MODE
			11/02/2009	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/800,670	VINCENT ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	WILLIAM S. POWERS	2434	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 21 July 2009.  
 2a) This action is **FINAL**.                    2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1-14 is/are pending in the application.  
 4a) Of the above claim(s) 6-13 is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 1-5 and 14 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on 14 March 2004 is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____ .
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)	5) <input type="checkbox"/> Notice of Informal Patent Application
Paper No(s)/Mail Date _____.	6) <input type="checkbox"/> Other: _____ .

## **DETAILED ACTION**

### ***Response to Arguments***

1. Applicant's arguments filed 7/21/2009 have been fully considered but they are not persuasive.
2. As to Applicant's argument that, "Kuzma does not pertain to the multimedia environment" (Remarks, p. 7), the Examiner respectfully disagrees. It appears that the Applicant is trying to limit the scope of the Kuzma patent to "'telegrams, mailgrams, and telefax' (col. 4, lines 10-16)" (Remarks, p. 7). The Examiner can find no support for this assertion. The Applicant is directed to col. 4, lines 17-21 of the Kuzma patent which states, "Electronic message 11 also can be associated with a computer-based messaging system..." Clearly, the Kuzma patent covers more than just "telegrams, mailgrams and telefax". Further, the Kuzma patent provides for multi-media messaging as evidenced by sending encoded graphics in a message (Kuzma, col. 4, lines 41-44 and col. 4, lines 65-67). The Examiner sees the inclusion of image(s) and text as multi-media. For at least the reasons above, the rejection of the claims is maintained.
3. As to Applicant's argument that, "There is no need in Mobile News to pay for the transmission of messages" (Remarks, p.7), the Examiner respectfully disagrees. It is pointed out that the Mobile News reference was not used for the limitation associated with the charging of fees for message transmission. Additionally, there is nothing in the Mobile News reference that makes the sending of MMSs free. In fact, the Mobile News reference states, "Intercarrier messaging will allow users to send MMS messages across different networks, further enhancing the potential for operators to increase their

revenues from MMS" (MTN, p. 1). Clearly, MMS messages are not intended to be a "no fee" option. For at least the reasons above, the rejection of the claims is maintained.

4. Arguments directed to the newly added limitations are addressed below.

### ***Response to Amendment***

5. The Examiner has stated the below column and line numbers as examples. All columns and line numbers in the reference and the figures are relevant material and Applicant should take the entire reference into consideration upon the reply to this Office Action.

6. Claim 1 has been amended.
7. Claims 6-13 have been withdrawn.
8. Claims 1-5 and 14 are pending.

### ***Claim Rejections - 35 USC § 103***

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

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1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

11. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

12. Claims 1-5 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent No. 5,771,289 to Kuzma in view of Mobile Tech News “Logica first to enable MMS Intercarrier messaging” (hereinafter MTN) in further view of US Patent Application Publication No. 2003/0193967 to Fenton et al. (hereinafter Fenton).

As to claim 1, Kuzma teaches:

- a. Sending, by sender terminal, a multimedia message which includes an electronic stamp (transmitting electronic messages with electronic stamps and the message can be composed of images and text) (Kuzma, col. 2, lines 26-36 and col. 4, lines 65-67).

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- b. Verifying the validity of the electronic stamp by the multimedia message service center (electronic post office checks stamp for authenticity) (Kuzma, col. 5, lines 58-65).
- c. Wherein the electronic stamp is an element associated with paying for sending the message, and includes a value of the stamp (stamp is affixed to the message in an amount appropriate to the size of the message) (Kuzma, col. 4, lines 36-44).

Kuzma fails to teach the multimedia messaging service being a mobile Multimedia Messaging Service Center. However, in an analogous art, MTN teaches the use of Multimedia Messaging Service environment using a Multimedia Messaging Service Center (MTN, MMS Center). Therefore, one of ordinary skill in the art at the time the invention was made would have been motivated to implement the electronically stamped multimedia messaging payment system of Kuzma with the Multimedia Messaging Service environment and center design of MTN in order to take advantage of allowing the sending of messages between users of different networks and increase revenue for mobile operators as suggested by MTN (MTN, pp. 1-2).

Kuzma as modified teaches varying the value of the electronic stamp according to the size of the message (Kuzma, col. 4, lines 27-34), but does not expressly mention the cost of transmission being tied to the type of message or the number of recipients. However, in an analogous art, Fenton teaches:

- d. Wherein the value of the stamp depends on at least one of a type of message and a number of addresses that the message is to be sent to (charging

criteria for multimedia messages include message type, number of messages sent, sender/recipient, ...) (Fenton, [0039]).

Therefore, one of ordinary skill in the art at the time the invention was made would have been motivated to implement the Multimedia Messaging Service of Kuzma as modified with fee structure of Fenton in order to provide flexible charging schedules for MMS users as suggested by Fenton (Fenton, [0007]).

As to claim 2, Kuzma as modified teaches wherein said Multimedia Messaging Service message comprises a header containing parameters relating to the transportation and the content of said message and a body containing elements of said message (messages include a header with addressee information and a message body) (Kuzma, col. 4, lines 5-20) and one parameter in said header is a field corresponding to the stamping of the message (stamp is affixed to header) (Kuzma, col. 5, lines 48-57).

As to claim 3, Kuzma as modified teaches the value associated with said stamping field of said header is an encrypted numerical value (encoded electronic stamp) (Kuzma, col. 5, lines 35-40).

As to claim 4, Kuzma as modified teaches wherein said value associated with said stamping field in said header is a binary value indicating the presence of said electronic stamp in said message body (Kuzma, col. 5, lines 47-57).

As to claim 5, Kuzma as modified teaches wherein a body part of said message body contains said electronic stamp in the form of an encrypted numerical value (stamp is placed on a message with an appropriate value) (Kuzma, col. 4, lines 35-45).

As to claim 14, Kuzma as modified teaches wherein the terminal is a mobile telephone (GSM handset) (MTN, p. 2).

***Conclusion***

13. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to WILLIAM S. POWERS whose telephone number is (571)272-8573. The examiner can normally be reached on m-f 8:00-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kambiz Zand can be reached on 571 272 3811. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/W. S. P./  
Examiner, Art Unit 2434

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10/25/2009

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